IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 39 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEIRS OF DECEASED KANBI JIVRAJ LAVABHAI & Ors. Appellants
Versus
STATE OF GUJARAT - Defendant(s)

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Appearance :
MR ND BUCH FOR MR ND NANAVATI for Appellant(s) : 1,1.2.1 - 3,3.2.1
MR AY KOGJE AGP for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/11/2006

ORAL JUDGMENT

1. Shri N.D. Buch, learned counsel for the appellants and Mr.A.Y. Kogje, learned Assistant Government Pleader for the respondent – State.

2. The plaintiffs who had filed the suit for declaration and injunction, suffered dismissal of suit and the appeal under the hands of the lower courts, therefore, they are before this court.

3. The appeal had been admitted for hearing the parties on 23/11/1990 by some Honourable Judge of this Court, but the questions required for consideration or substantial questions of law, have not been framed. Of late, I am finding that in various appeals, simple order of admission has been issued, but the questions have not been framed. The Supreme Court has observed that a simple order of admission would not mean that the appeal has been admitted for hearing the parties on all the questions proposed by the appellants. Be that as it may. As the appeal has already been admitted, I frame the following substantial questions of law;

(i) Whether the courts below were unjustified in holding that the suit filed by the present plaintiffs were not within the limitation?

(ii) If the answer to the question No.1 is in favour of the plaintiffs, then whether the courts below were justified in

holding that the resumption of the land in question by the then Junagadh State was in accordance with law, particularly in not following the procedure for resumption?

4. From the facts available on records, it appears that the land of Survey Nos.87/1 and 87/2 was in possession of the predecessor-in-title of the present plaintiffs – appellants. About 19 Gunthas of land from Survey No.87/1 and 5 Gunthas of land from Survey No.87/2 was carved out and Survey No.87/5 admeasuring 24 Gunthas was made. It also appears that somewhere in the year 1932, a Notification was issued by the then State Government for resumption of the suit land. According to the plaintiffs, the land for which the Notification was issued, was for Survey No.88 but under some wrong interpretation, it was referred to as Survey Nos.87/1 and 87/2 and 87/5. It is also submitted that as all the actions of the State Government and the revenue authorities were wrong, the suit of the plaintiffs would be within limitation, they would be entitled to a declaration and a decree for an injunction restraining the defendants from entering into the land or causing obstruction in the

plaintiffs' possession.

5. The respondents in their detailed Written Statement had submitted that the land, in fact, was resumed in the year 1932, that original measurement of Survey No.87/1 was 4 Acres and 2 Gunthas, out of which 24 Gunthas of land was carved out to constitute Survey No.87/2 and thereafter, Survey No.87/5 was made. The State has also submitted that Survey No.87/2 has become part of Navab's Rest House and the Revenue Commissioner had made an order on 17/11/1972 to that effect, but through oversight the said directions could not be carried out in the relevant revenue records. It was also submitted by the State Government that the land ad-measuring 3 Acres and 23 Gunthas of Survey No.87/1 was sold by Mavabhai Arjanbhai Kanbi to Gokalbhai Nathabhai and since thereafter, the plaintiffs' father had no right, title or interest in the property. It was also submitted that the name of Mavabhai Arjanbhai Kanbi was deleted from the revenue records w.e.f. 3/4/1955 and entire Survey No.87 was included in the Rest House. According to them, the suit was patently barred by limitation as it was filed beyond the period of prescribed limitation.

6. The two courts have found that the plaintiffs have failed to prove that they are owners of Survey Nos.87/1, 87/2 and 87/5. The courts have also found that the plaintiffs are not in possession of the suit land and the suit is barred by limitation. The first appellate court while considering the question of limitation has observed that under sec.37 of the Bombay Land Revenue Code, an inquiry was made by the Competent Authority and the authority found that the present plaintiffs had no right in the property. That order was approved by the Commissioner. If such an order has already been passed by the competent revenue tribunal and the same is not challenged before the appropriate court within the period of limitation, which would be three years, then the plaintiffs would not be entitled to file a suit for declaration after a long lapse of many years on the ground that their title is under jeopardy. The plaintiffs' title had already been challenged by the authority / revenue department long many years back. It also appears from the lower court's records that Exh.58 is of 1950 which does not show that after the order of Chief Revenue Commissioner Exh.114, the name of Mavabhai Arjanbhai continued. In

column No.7 of said Exh.114, it is specifically stated that Survey No.87/1 to 87/5 have been resumed by the then State. On back of Exh.58, in column No.6 for Survey Nos.87/1 to 87/5, the name of owner is not shown. It is also to be seen from the records that the writing of Exh.44 indicated that Mavabhai Arjanbhai was original owner of the suit land. The records show that those were the entries prior to 1933, but after 1933, the plaintiffs could not produce any cogent documentary evidence to prove that on the date of the suit, they continued to be the owners of property.

7. True copies of the original records have only been produced, but that would not make much of the difference, because, the parties knew as to what was the case of the other-side. In the present matter, entries have been corrected long years back and property has been resumed by the authority either in 1933 or somewhere in between 1933 and inquiry which was made in the year 1955. If the plaintiffs had been dispossessed either in the year 1932/1933 or in 1955, then their suit for declaration and injunction in the year 1975 would not be maintainable if it is held that they were not in possession

of the suit property on the date of the suit. As the first question is answered against the interest of the appellants – plaintiffs, the second question is not required to be considered. The appeal deserves to and is accordingly dismissed. No costs.

(R.S. GARG, J.)

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